REMARKS/ARGUMENTS

The Office Action mailed January 24, 2008 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Applicant has amended the claims to more clearly describe the invention. Applicant has canceled claim 3. It is believed that no new matter has been introduced by this amendment.

The rejection of claim 3 under 35 U.S.C. 112, first paragraph, as failing to to comply with the written description requirement are moot in view of Applicant's amendment canceling claim 3.

Applicant's Comments related to the EP 0049777 Publication:

EP '777 discloses liquid colorants consisting of a soluble dye and an (insoluble) pigment which are used for various purposes, especially for coloring shoe polish and bees wax for candles. In these cases the liquid medium is a hydrophobic organic solvent (see Examples). The word "fertilizers" is mentioned only once, namely on page 2, penultimate paragraph, and is directly associated with "aqueous mediums of all kinds, e.g., paper pulps, glues, wood impregnating agents, plant protection agents, fertilizers,... " . In the paragraph which follows, it is stated: "On the other hand for coloring organic solvents containing mediums of all kinds, e.g. waxes, plugs, lacquers." No fertilizers are mentioned here.
The working examples are silent of coloring a fertilizer. As a consequence, the skilled artisan would learn from the EP '777 Publication that coloring a fertilizer with an organic pigment would require a liquid aqueous medium, which is just the opposite of Applicant's present claims requiring a paraffin oil or vegetable oil. Thus, EP '777 teaches away from the present invention and cannot reasonably be combined with Lofgren and Tilokavichai.

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Applicant's Response to Previous Rejections which were not addressed in Examiner's Action:

Claims 1, 3, 5-13 were previously rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper). The rejection of claim 1, as amended, under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper), should be withdrawn for the reason that both the '649 and the '030 Papers are directed to the coloring of fertilizers, but both the '649 and '030 Papers teach away from Applicant's invention by employing inorganic talcs, metal oxides and silica pigments, and for the reason that the '649 and '030 Papers are silent on any use of organic pigments as claimed by Applicant, and no one skilled in the art would arrive at Applicant's invention from any combination of the disclosures the '649 or the '030 Papers. The '649 Paper discloses and claims a method of coating fertilizer particles with a coating composition comprising an inorganic pigment. The '649 Paper is silent on the use of any organic pigment. Thus, the '649 Paper teaches away from Applicant's process for coloring fertilizer particles with organic pigments and no one skilled in the art would have any expectation of success for substituting an organic pigment for the inorganic pigment. The '030 Paper may provide an equivalence of mineral oil and vegetable oil in suspending inorganic pigments for coloring fertilizers, but the '030 Paper only teaches the use of inorganic pigments, and teaches away or is at best silent on the use of any organic pigments to color fertilizer particles. Thus, the process of Applicant's invention is different from the process of the '649 Paper and the '030 Paper, and no one skilled in the art would replace the inorganic pigment with an organic pigment in the process of the '649 and the '030 Papers because both papers disclose the difficulty of coloring fertilizers and fertilizer blends with an even distribution of pigment, and for the reason that there is no expectation of success for such a substitution. Therefore, the rejection of claim 1, as amended, under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper), should be

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withdrawn for the reason that both the '649 and '030 Papers **teach away** from applicant's invention by **requiring an inorganic pigment which is absent from Applicant's invention, and no one skilled in the art would be motivated to replace the inorganic pigment in the methods of the '649 and '030 Papers with the organic pigments recited in Applicant's claim 1, because there is no expectation of success and no one skilled in the art would be motivated to make the substitution without the improper use of hindsight.** The rejection of claims 2 and 6-13, under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) in view of WO 97/19030 to Tilokavichai et al. ('030 Paper), should be withdrawn for the reasons given in support of claim 1 from which they depend.

Applicant's Response to the above 103 Rejections in view of EP 0049777:

Claim 1-2 and 6-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper) in view of EP 0049777. The rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper) in view of EP 0049777, should be withdrawn for the reasons given hereinabove in connection with the '649 and the '030 Papers which taught away from applicant's invention, and for the reason that the 'EP 777 Publication specifically teaches away from Applicant's invention. EP '777 discloses liquid colorants consisting of a soluble dye and an (insoluble) pigment which are used for various purposes, especially for coloring shoe polish and bees wax for candles. In these cases the liquid medium is a hydrophobic organic solvent (see Examples). The word "fertilizers" is mentioned only once, namely on page 2, penultimate paragraph, and is directly associated with "aqueous mediums of all kinds, e.g., paper pulps, glues, wood impregnating agents, plant protection agents, fertilizers,... " . In the paragraph which follows, it is stated: "On the other hand for coloring organic solvents containing mediums of all kinds, e.g. waxes, plugs, lacquers." No fertilizers are mentioned here. The working

examples are silent of coloring a fertilizer. As a consequence, the skilled artisan would learn from the EP '777 Publication that coloring a fertilizer with an organic pigment would require a liquid aqueous medium, which is just the opposite of Applicant's present claims requiring a paraffin oil or vegetable oil. Thus, EP '777 teaches away from the present invention and cannot reasonably be combined with Lofgren and Tilokavichai. The instant invention, by employing materials that, to one of ordinary skill, suggested problems rather than a solution, proceeds in a direction contrary to the prior art. This strongly supports the unobviousness of the claimed invention. Furthermore, piecemeal reconstruction of the prior art patents in the light of Applicant's disclosure shall not be the basis for a holding of obviousness, particularly when the prior art teaches away from the combination. Therefore, the rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper) in view of the EP '777 Publication, should be withdrawn for the reason that

1. All the references teach away from Applicant's invention as discussed hereinabove, particularly the 'EP 777 which teaches that coloring a fertilizer with an organic pigment would require a liquid aqueous medium, which is just the opposite of Applicant's present claims requiring a paraffin oil or vegetable oil, and it is improper to combine only certain parts of those references when the references teach away from the invention;
2. Failure to consider the invention as a whole is an error of law;
3. No one skilled in the art would be motivated to arrive at Applicant's invention based on the cited references without the improper use of hindsight using the Applicant's own Specification as a guide.

The rejection of claims 2 and 6-13 under 35 U.S.C. 103(a) as being unpatentable over WO 00/76649 A1 to Lofgren et al. ('649 Paper) and WO 97/19030 to Tilokavichai et al. ('030 Paper) in view of EP '777, should be withdrawn for the reasons given in support of claim 1, from which they depend.

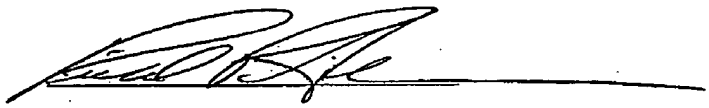
It is respectfully submitted that, in view of the above remarks, the rejections under §112 and §103 should be withdrawn and that this application is in a condition

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for an allowance of all pending claims. Accordingly, favorable reconsideration and an allowance of all pending claims are courteously solicited.

An early and favorable action is courteously solicited.

Respectfully submitted,



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